UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT
CHICAGO, ILLINOIS 60604

August 13, 1982

Hon. WILBUR F. PELL, JR., Circuit Judge
Hon. WILLIAM J. BAUER, Circuit Judge
Hon. HARLINGTON WOOD, JR., Circuit Judge

FARMERS UNION CENTRAL EXCHANGE, INC., et al., *Petitioners,*	
No. 82-2211	
v.	Original Petition for Writ of Mandamus
HONORABLE FREDERICK J. HERTZ, United States Bankruptcy Judge, *Respondent.*	

This matter comes before the court for its consideration of the following documents:

1. The "PETITION FOR A WRIT OF MANDAMUS" filed on July 30, 1982, by counsel for petitioners.

2. The "RESPONDENTS' ANSWER TO THE PETITION FOR A WRIT OF MANDAMUS" filed on August 9, 1982, by counsel for respondents.

3. The "MOTION FOR A STAY OF PROCEEDINGS BELOW PENDING DECISION BY THIS COURT" filed on August 3, 1982, by counsel for petitioners.

4. The "MOTION TO ESTABLISH PROCEDURES FOR AN EXPEDITED APPEAL" filed on August 3, 1982, by counsel for petitioners.

5. The "RESPONDENTS' MEMORANDUM IN OPPOSITION TO THE MEMBER-OWNERS' MOTIONS FOR A STAY OF THE PROCEEDINGS BELOW AND FOR THE ESTABLISHMENT OF EXPEDITED PROCEDURES" filed on August 9, 1982, by counsel for respondents.

Petitioners have requested that this Court stay the lower court proceedings pending decision on the petition for a writ of mandamus and expedite the procedures before this Court. In view of this order, it is not necessary for us to rule on these requests.

Petitioners have presented this Court with a Petition for Writ of Mandamus following the entry of an interlocutory order by the Bankruptcy Court denying their motion to dismiss or stay the proceedings before that Court. Pursuant to 28 U.S.C. § 1334(b), "the district courts . . . shall have jurisdiction of appeals from interlocutory orders and decrees of bankruptcy courts, but only by leave of the district court to which the appeal is taken." It appears then that this Petition for Writ of Mandamus is an inappropriate vehicle for seeking interlocutory review in this Court.

Petitioners are challenging the Bankruptcy Court's jurisdiction over certain state-law claims. A challenging assumption of jurisdiction must be plainly wrong. This Court made clear that, "if a rational and substantial legal argument can be made in support of the questioned jurisdictional ruling, the case is not appropriate for mandamus. . . ." *Comfort Equipment Co.* v. *Steckler*, 212 F.2d 371, 373 (7th Cir. 1954) (*citing American Airlines* v. *Forman*, 204 F.2d 230, 232 (3d Cir. 1953)).

On June 28, 1982, the United States Supreme Court decided *Northern Pipeline Construction Co.* v. *Marathon Pipe Line Co.*, 50 U.S.L.W. 4892, and held that the broad grant

of jurisdiction to the bankruptcy courts contained in the Bankruptcy Act of 1978 is unconstitutional. The Supreme Court, however, stayed judgment in that case until October 4, 1982, to "afford Congress an opportunity to reconstitute the bankruptcy courts or to adopt other valid means of adjudicating, without impairing the interim administration of the bankruptcy laws." *Id.* at 4902.

On July 14, 1982, the Chief Judge of the United States District Court for the Northern District of Illinois, entered a General Order that said in part: ". . . That during the time the order of the Supreme Court staying the *Marathon* judgment is in effect no cause cognizable in bankruptcy under the Bankruptcy Reform Act of 1978 will be heard by the district court except as provided by that Act." While the above General Order on its face would seem self-contradictory, we will assume for the present purposes that it contemplates and authorizes continued handling by bankruptcy judges, during the pendency of the stay in *Northern Pipeline*, of proceedings specifically enumerated in the Act. The Act grants the bankruptcy courts jurisdiction over "all civil proceedings arising under title 11, the Bankruptcy title, or arising in or related to cases under title 11." 28 U.S.C. § 1471(b) (1976 ed., Supp. III).

For these reasons, we find that there has been no abuse of discretion on the part of Judge Hertz of the Bankruptcy Court and the Petition for Writ of Mandamus is DENIED.

UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

In re ENERGY COOPERATIVE, INC., Debtor.	Chapter 11 No. 81 B 005811
ENERGY COOPERATIVE, INC., Plaintiff, and CONTINENTAL ILLINOIS NATIONAL BANK & TRUST COMPANY OF CHICAGO, et al., Intervening Plaintiffs, v. FARMERS UNION CENTRAL EXCHANGE, INC., et al., Defendants.	Adversary No. 81 A 3286
ENERGY COOPERATIVE, INC., et al., Plaintiffs, v. THE PERMIAN CORPORATION, et al., Defendants.	Adversary No. 81 A 2075

SOCIETE NATIONALE POUR LA RECHERCHE, LA PRODUCTION, LA TRANSPORT, LA TRANSFORMATION ET LA COMMERCIALISATION DES HYDROCARBURES, Counter-Plaintiff, v. CONTINENTAL ILLINOIS NATIONAL BANK & TRUST COMPANY OF CHICAGO, et al., Counter-Defendants and Third Party Plaintiffs, v. FARMERS UNION CENTRAL EXCHANGE et al., Third Party Defendants.	Adversary No. 81 A 2075

ORDER

At Chicago, Illinois, in
said District and Division
July 22, 1982

This matter coming on to be heard on the motion of Defendants herein to dismiss for lack of jurisdiction or in the alternative to stay all proceedings until October 4, 1982, and to stay all proceedings pending decision on Defendants' motion to dismiss for lack of jurisdiction; due notice having

been given to all parties entitled thereto; the court having considered said motions, the memoranda filed by the parties, arguments of counsel and the court having considered the General Order entered by the District Court on July 14, 1982; the court having concluded that the appropriate procedure to be followed in these cases in light of the decision of the United States Supreme Court in *Northern Pipeline Construction Co.* v. *Marathon Pipe Line Co.*, 50 U.S.L.W. 4892 (1982) is to continue until October 4, 1982, exercising all of the jurisdiction provided in chapter 90 of Title 28 of the United States Code; and the court being fully advised in the premises;

IT IS HEREBY ORDERED that the motions of Defendants be and they hereby are denied.

ENTER:

/s/ FREDERICK J. HERTZ
Bankruptcy Judge

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

GENERAL ORDER

Upon review of the opinion of the Supreme Court in the case of *Northern Pipeline Construction Co.* v. *Marathon Pipe Line Co., et al.*, 81-150, and with particular reference to the case of *Buckley* v. *Valeo*, 424 U.S. 1, 143 (1976), cited therein as expositive of the meaning of the order staying the Court's judgment until 4 October 1982, it is the view of this court that for the period of the stay the *Marathon* case does not affect the jurisdiction of the bankruptcy court. It is further the opinion of this court that no stay of any proceedings in the bankruptcy court prior to 4 October 1982 is warranted by the *Marathon* decision.

By direction of the full Court met in special session on Tuesday, 13 July 1982:

IT IS HEREBY ORDERED That during the time the order of the Supreme Court staying the *Marathon* judgment is in effect no cause cognizable in bankruptcy under the Bankruptcy Reform Act of 1978 will be heard by the district court except as provided by that Act.

IT IS FURTHER ORDERED That any such cases filed with the district court during such period will be remanded to the bankruptcy court.

ENTER:

FOR THE COURT

/s/ FRANK M. MCGARR
(Chief Judge)

Dated at Chicago, Illinois, this 14 day of July, 1982.

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

GENERAL ORDER IN BANKRUPTCY

Determinations made by the United States Supreme Court on June 25, 1982 have established fundamental uncertainties regarding the jurisdiction and powers of the bankruptcy court under Section 241(a) of Pub. L. 95-598, 92 Stat. 2549. Northern Pipeline v. Marathon Pipe Line and United States, etc., Nos. 81-150 and 81-546. Four members of the Court determined that "the broad grant of jurisdiction to the bankruptcy courts contained in § 241(a) is unconstitutional," specifically addressed in footnote 40 certain options and considerations relevant to the issue, and then held that such decision shall apply only prospectively and also stayed judgment affirming the district court until October 4, 1982 to "afford Congress an opportunity to reconstitute the bankruptcy courts or to adopt other valid means of adjudication without impairing the interim administration of the bankruptcy laws." Opinion of Justice Brennan at 37-38.

Two members of the Court concurred in the judgment, prospective application and stay after observing that "this grant of authority (to entertain and decide Northern's lawsuit over Marathon's objection) is not readily severable from the remaining grant of authority to Bankruptcy Courts under § 241(a), see ante, at 37 n. 40, ..." Concurring opinion of Justice Rehnquist at 4. The essential proscription in each opinion appears to be that bankruptcy court judges, who do not have the protection afforded by Article III of the Constitution, may not make final determinations in a "state common-law action, not made subject to a federal rule of decision, and related only peripherally to an adjudication of bankruptcy under federal law" unless the

litigants consent. Dissenting opinion of Chief Justice Burger at 1.

However, it appears that six members of the Court have determined nevertheless that the bankruptcy courts, after October 3, 1983, absent further action by Congress or the Supreme Court in the meantime, will be without all of the jurisdiction and powers assigned by Section 241(a) under Section 405(a) (1) of Pub. L. 95-598 with respect to all civil proceedings arising under title 11 of the United States Code or arising in or related to cases under such title 11. It is not possible to determine at this time, absent further action by Congress or the Supreme Court, what jurisdiction and powers the district court may have after October 3, 1982 in bankruptcy proceedings under Section 405(a) (2) of Pub. L. 96-596 or existing 28 U.S.C. Sec. 1334 which remains effective until April 1, 1984 under Sections 238 and 402(b) of Pub. L. 95-598. This general order is entered accordingly to advise and inform attorneys, debtors, creditors and other parties in interest with respect to proceedings now or hereafter pending in this court.

IT IS THEREFORE ORDERED:

1. This order, intended for the period June 28 through October 3, 1982, shall be effective forthwith and until further order.

2. Discovery procedures and trial of any adversary proceeding now or hereafter pending wherein a trustee including a debtor in possession seeks to recover a judgment for money or property under 11 U.S.C. Sec. 542(b) (collection actions etc.) shall be suspended until further order of the court.

3. Trial of any adversary proceeding now or hereafter pending wherein a trustee including a debtor in possession

seeks to recover a judgment for money or property under 11 U.S.C. Sec. 550(a) (preference actions etc) shall be suspended until further order of the court.

4. Discovery procedures and trial of any adversary proceeding now or hereafter pending wherein any other litigant seeks to recover a judgment for money or property under nonbankruptcy law against a litigant who is not the debtor of the trustee including the debtor in possession shall be suspended until further order of the court.

5. All other adversary proceedings, and all bankruptcy proceedings not designated adversary proceedings, now or hereafter pending, shall continue and be concluded without interruption.

6. This general order shall not limit whatsoever the existing jurisdiction and powers of each bankruptcy judge to grant relief by motion or otherwise in particular cases or proceedings and is intended solely to provide general guidelines for this bankruptcy court pending further action by Congress or the Supreme Court with respect to the jurisdiction and powers of this court.

Dated & Filed: July 6, 1982

/s/ KENNETH G. OWENS
Executive Bankruptcy Judge

Attest: Filed July 6, 1982,
and copies mailed or
delivered on July 6, 1982

/s/ TIMOTHY R. WALBRIDGE
Clerk, U.S. Bankruptcy Court

Clerk, U.S. Bankruptcy Court